# EXHIBIT B

## EXCERPTS FROM THE DEPOSITION OF RAHUL GUPTA, M.D.

## 04/15/2021

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

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THE CITY OF HUNTINGTON,

Plaintiff,

vs. CIVIL ACTION
NO. 3:17-01362

AMERISOURCEBERGEN DRUG CORPORATION, et al.,

Defendants.

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CABELL COUNTY COMMISSION,

Plaintiff,

vs. CIVIL ACTION
NO. 3:17-01665

AMERISOURCEBERGEN DRUG CORPORATION, et al.,

Defendants.

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Videotaped and videoconference deposition of RAHUL GUPTA, M.D. taken by the Defendants under the Federal Rules of Civil Procedure in the above-entitled action, pursuant to notice, before Teresa S. Evans, a Registered Merit Reporter, all parties located remotely, on the 15th day of April, 2021.

period of time, you were in private practice and you held yourself out as an internist. Correct?

A. Amongst other areas as well, correct.

Q. And my question to you then, with that background, is: Have you ever held yourself out as an epidemiologist and solely an epidemiologist?

A. I still do not understand the nature of the question of being a physician solely as an epidemiologist. I can help to answer the question this way: That as the local health officer and physician director, which is the official position at Kanawha-Charleston Health Department, my role from March of 2009 to December of 2014 - which was almost six years - involved leading a team of epidemiologists in a variety of work that included conducting epidemiological surveys, studies, analysis and policy making as a result of that work for the largest county in the state of West Virginia, which is Kanawha County.

Following that, because partly of that work, the Governor of the state of West Virginia asked me to serve as the State Health Officer, which also requires to have - similar to Kanawha-Charleston Health Department - a

MS. MAINIGI: Okay, that's fine.

Q. Go ahead, Doctor Gupta.

A. So basically my work from 2015 and '16 and '17, it was the totality of the work that was recognized for this award. That really required a asserted effort from day one, so going back, very beginning, one of the first -- when I came into the office in January of 2015, it became my priority number one, priority number two and priority number three, to start addressing or help address the problem of the overdose deaths that we were facing, as well as the nonfatal overdoses and the carnage and the killing that was happening in West Virginia around the clock of people because of the opioid crisis.

So the first thing we did was: We created the first -- funded the first Harm Reduction Program by providing seed funding to Cabell-Huntington Health Department in Cabell County, so we initiated that program.

I helped not only fund, but helped begin that program with Doctor Kilkenny, as I mentioned, worked very closely with Doctor Kilkenny in Cabell-Huntington Health Department.

We then continued to utilize the model of Cabell-Huntington Health Department's Harm Reduction Program to expand to other areas of the state. In early 2017, I continued to see 15 to 20 percent rise in overdose deaths year after year after year, so along with working to write the 1115 Medicaid waiver, expand -- remove the barriers to treatment, work legislation, create the Office of Drug Control Policy at the State level --

One of the important things we did is: We conducted a social autopsy. The social autopsy that was conducted, we looked at all of the deaths from overdose that happened in 2016. We -- we did a CSI type of investigation to look at people's deaths in the year before their deaths.

We had very significant findings that included that 90 percent of decedents have an interaction with the -- you know, the PDMP or the prescription drug monitoring -- Controlled Substances Monitoring Program in West Virginia, as we call it, and we found that a significant percentage of women -- so half of the women that died had filled a prescription within 30 days of their death.

We also found that if people went to multiple pharmacies, that chances was as high as 70 percent of dying because of overdose. We -- so we had very significant findings like these, because of which then we -- I put together a team to create an opioid response plan of national and state experts, including John Hopkins University, Marshall University and West Virginia University.

They came out with a plan, 12-point plan. We -- I submitted that plan to the Governor. As a result of this, basically -- and I don't want to like take too much of this time. But what happened was: Before I came, the rate of prescription drugs and after I left, in the country, it was down by 30 percent; in West Virginia, because of these efforts, it was down by 53 percent.

In 2017 to 2018, because of the work of 2017, the paper was recognized nationally, the outcomes that would happen. That was the only year, from 2017 to 2018, that the nation had any drops in overdose deaths, and nationally, there was a drop of about 4 percent average. But in West Virginia, because of this work, we had 11 percent

BY MS. MAINIGI:

Q. Doctor Gupta, I'm going to show you Statement No. 3, Bullet No. 3 of Exhibit 58.

MS. MAINIGI: Steve, could we scroll down to it, please?

MR. RUBY: Yep. There's a little lag here. Sorry.

MS. MAINIGI: Sorry.

Q. Okay. Doctor Gupta, why don't you take a moment and read that? Let me know when you're ready.

A. Okay.

Q. Okay. Statement 3 reads, "There is a direct correlation between diverted prescription pills and the transition to using street drugs such as heroin, fentanyl, methamphetamine, etc." Do you agree with this statement, Doctor Gupta?

A. Yes.

Q. And what is your basis for this statement?

A. Well, it's both the literature that exists to support that as well as my experience and the opinions that have resulted from my experience.

Q. Okay. Can you give me specific literature references that would support that statement,

Statement 3?

A. Sure. You know, as -- I think back as 2014, Theo Cicero actually published a 50-year analyses in general psychiatry that showed that, you know, as much as 75 to 80 percent of the transition that was happening in people who were using heroin was actually -- they were the people that were in fact looking at -- nowadays, were transitioning from prescription drugs, as opposed to the '60s where 80 percent of people were going in the opposite direction.

So there's been a lot more literature since that that shows about 80 percent of the people that use heroin today have had their start from prescription opioids to begin with.

Now, having said that, we saw very similar facts in West Virginia. We started to see people that were often - because of a large volume and diversion that resulted often in addiction were utilizing prescription drugs, and as there was more policy and actions that were being taken to address that - part of that was reduction in supply - these people really often, as an example, when there was action on shutting down a pill mill, there were

often people that would then not have a supply.

As a result of that, they would either have two or three options. One option was to go to the emergency room. We saw flooding of the emergency room.

Second was to go to street drugs which were much more readily available, cheap in terms of heroin, or just die, overdose and die.

And we were seeing all of this. So our findings matched what was being published. In fact, there's been some work done by Sarah Mars in Philly population that also showed very similar numbers, and we were matching that up.

So as that began to happen, more and more people transitioned to heroin, there began an infiltration of cutting heroin with fentanyl by drug dealers primarily to save costs, to make more money.

And as that was happening, fentanyl, of course, is a substance that's about 80 times more potent than morphine, so because it was uncontrolled, we were seeing batches of deaths happening together because of bad batch of fentanyl-cut heroin.

Across West Virginia, that was the case. When we had in 2016, fall of 2016 or so, an outbreak in Huntington, West Virginia that was first but not the only of its kind across the country, where in a matter of hours, dozens of people were overdosed and had to be taken to the hospital.

This was an example of where disease from overdose was starting to simulate an infectious disease, meaning you have a patient zero and -- or -- which would actually be a drug dealer that would have a bad batch, and that many people would get impacted.

Same thing happened in Beckley during my tenure, and other places as well.

So that -- that first phase was prescription drugs. The second phase, because of increased volume -- the volume, diversion and addiction was actually getting it on.

And the action that followed was to transition to heroin. That was wave two, as CDC describes it.

The third wave was actually mixing of heroin with synthetic opioids like fentanyl, and I

were prescribed?

A. Yes.

Q. So that's a matter of fact, not opinion. Right?

A. That's both a fact and an opinion.

Q. Well, it can be empirically proven, correct, whether it's true or not true?

A. It can be proven, and it also goes along with my experience as a physician and having to visit the neonatal ICUs across the state of West Virginia and neonatal ICUs across the country that I see that.

Q. And other than what you saw anecdotally across the country and across West Virginia, was there some sort of systemic research or information compilation that was done by your department on this issue?

A. Absolutely.

Q. What was that?

A. We, first of all, created a clinical definition for NAS that we had all the birthing facilities in the state of West Virginia, including Cabell County and City of Huntington's hospitals agree to.

And all of the doctors - meaning the birthing physicians in Cabell County and all across West -- across West Virginia, agreed to a common definition. Once we did that, we then started to capture that definition and those diagnoses in a program called Birth Score out of West Virginia University.

We worked very closely with experts in Marshall, at Marshall University, to measure the amount of NAS that was happening. And I'm using NAS intermittently with NOWS, which is neonatal opioid withdrawal syndrome, and we then characterized the rate of NAS per county, and we found that the average rate of NAS in the state was 5 percent. That's 1 in 20 babies, which is the highest by far of any state in the nation.

But we also found that some of the counties had much higher rate, to the tune of 10 and over 10 percent. Again, that's a published report, available in the public domain. And I -- I don't have a -- you know, a lot of recollection about every aspect of it.

Q. Do you remember who within your organization primarily did the research for that

report?

A. It would have been the -- under my supervision, the Department of Family and Children's Services.

Q. Statement 21. Let's turn to that for a moment. "Children diagnosed with at birth have noticeable difficulties learning and paying attention." Do you agree with that statement?

A. Once again, diagnosed with NAS is what's missing here, but if we could put "with" blank, because that's just -- it's an error in the statement.

Q. Okay.

A. So -- yeah.

Q. So with that "NAS" added, do you agree with that statement?

A. Yes.

Q. Now, you don't have any training in neonatology or pediatrics, correct?

A. Actually, I have had rotations during my training in pediatrics and neonatology.

Q. When you were a resident; is that correct?

A. When I was in medical school, and I don't remember if it was residency too. But I've also

done emergency room coverage that included -- as well as my primary care practice, that included children.

Q. Okay. And that includes neonatology as well?

A. I have not taken care of NICU babies, so no.

Q. Have you done any research on the incidence of attention or learning deficits in children diagnosed with NAS?

A. Not personally, I have not.

Q. Do you know what percentage of children diagnosed with NAS exhibit noticeable difficulties learning and paying attention?

A. We are just at the precipice and that data is evolving, so I can't tell you for certain what that percent is.

(Background noise.)

MS. MAINIGI: If someone is off mute, could you please go on mute? I hear some background or interference. Is there a --

MS. KEARSE: Someone needs to be put on mute.

(A discussion was had off the record

after which the proceedings continued as follows:)

BY MS. MAINIGI:

Q. Doctor Gupta, do you have any studies or reports that would support the statement in 21 that you --

A. Yes.

Q. -- can give me?

A. Yes.

Q. What are they?

A. There's a number of reports, including -- if you go to the CDC website, and that clearly talks about some of the challenges in learning as well as memory development, cognitive development as a consequence of NAS.

Q. Now, can you tell me what percentage of NAS diagnoses result from prescription opioid use versus illicit opioid use?

A. Once again, very similar to people who die and you cannot tell in them because the metabolites are the same. To the developing baby, it doesn't really matter whether it's prescription or otherwise, so --

What I can tell you is: We did

studies in West Virginia at Bureau of Public Health and we found that one out of five babies' cord blood had a substance positive. That was with -- that was inclusive of prescription as well as illicit.

We also found that almost 15 percent of intrauterine exposure was positive for substances. And I believe that was prescriptions.

But once again, I don't have access to that data right now, so I cannot be 100 percent certain at this point.

Q. The one-out-of-five statistic, was that something that was published by --

A. Yes.

Q. -- by who?

A. We have published that. So the first study was published by -- by one of the neonatologists - we funded the study at CAMC - Doctor Stefan Maxwell.

Q. 22, "As children with NAS enter the classroom, there will be noticeable, interruptive and impulsive behavioral issues." Do you agree with that statement?

A. Yes.

Q. Are you making that statement as a mental health professional?

A. I'm making that statement as a Commissioner who has interacted with hundreds of teachers, school board members and parents and has learned a lot through interacting with actual West Virginians on the ground.

It is my opinion with a reasonable degree of certainty that children, as they're growing up who are diagnosed initially with neonatal abstinence syndrome have a significant difficulty oftentimes with impulse control, with focus in classroom issues and may sometimes get misdiagnosed as ADD.

Q. Do you -- besides your own experience talking to teachers and so forth, do you have any studies that you can cite to?

A. Yes. So there's a lot of literature. I'm happy to share with you. Some of the folks that have worked on this is people like Stephen Patrick at Vanderbilt and others. That literature is there and is evolving and includes - which is not mentioned here - some of the birth defects as well of children with NAS.

Q. Okay. And let's go back to No. 8. No. 8 reads, "The opioid epidemic has lead to an increase in the number of children entering the foster care system, rapidly increasing child welfare costs to the state." Do you agree with that statement?

A. Yes.

Q. Now, the foster care system in West Virginia was the responsibility of a different part of DHHR than your office; is that correct?

A. That's correct.

Q. You did not oversee the foster care system, did you?

A. I did not.

Q. Where did -- what's your basis for this statement then?

A. In addition to being the Commissioner of the Bureau for Public Health, as I mentioned before, I'm also -- I was also the State Health Officer. That being, it was my responsibility in that role to be overseeing the -- you know, number of other aspects of the public health system.

So we interacted frequently with and worked closely with -- with the -- that particular department, as well as our parent department, which

is the Department of Health and Human Resources, as I -- and I reported to my boss, which is the Cabinet Secretary.

Now, clearly I was open to looking at the data for the foster care system, and saw and experienced in our budget presentations to the legislature each year that we worked together with the commissioners who create that, and we reported on this.

The Cabinet Secretary is on the record stating in his testimony - where I was present - that about 90 percent of the cost of foster system in West Virginia is associated in some form or other with the opioid crisis or the substance use disorder crisis.

So that's something that is on the record from my boss, and of course, it's my opinion based on that and some of the budgetary and other factors and working closely with the -- my co-agency, that this statement holds true with a substantial -- and again, a reasonable degree of certainty.

Q. So opioid prescription medications require a prescription; is that correct?